

§ 382.6

between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§ 382.6 and 382.7.

(b) Access to the confidential information pertaining to the royalty payments shall be subject to an appropriate confidentiality agreement and limited to:

(1) Those employees, agents, consultants and independent contractors of the Collective who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

(2) An independent and Qualified Auditor who is not an employee or officer of a sound recording Copyright Owner or Performer, but is authorized to act on behalf of the interested Copyright Owners with respect to the verification of the royalty payments; and

(3) Copyright Owners and Performers whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, or agents thereof provided that the only confidential information that may be shared pursuant to this paragraph (b)(3) are the monthly statements of account that accompany royalty payments.

(c) The Collective or any person identified in paragraph (b) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the Collective or such person.

[72 FR 71796, Dec. 19, 2007. Redesignated at 78 FR 23096, Apr. 17, 2013 and amended at 78 FR 23097, Apr. 17, 2013]

37 CFR Ch. III (7–1–15 Edition)

§ 382.6 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service to the Copyright Royalty Board, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested party's notice. Such notification of intent to audit shall also be delivered at the same time to the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years from the date of completion of the verification process.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested party or parties requesting the verification procedure shall pay all costs of the verification procedure, unless an independent and Qualified Auditor concludes that during the period audited, the Licensee underpaid royalties by an amount of five (5) percent or more; in which case, the service that made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those Copyright Owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the Collective.

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